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AUG 29 1968
JOHN F. DAVIS, CLERK

No. 458.

In the Supreme Court of the United States

OCTOBER TERM, 1968

LEAH JOYCE TELLER,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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To the Honorable, the Chief Justice and Associate Justices of The Supreme Court of the United States:

The Petitioner, Leah Joyce Teller, prays that a Writ of Certiorari be issued to review the decision of the United States Court of Appeals for the Seventh Circuit in the above case.

JUDGMENT AND OPINION OF THE COURTS BELOW

The judgment of the United States District Court for the Northern District of Illinois, Eastern Division, No. 66 CR 480 was entered on November 22, 1966, and is not reported but appears in the record filed with, and certified by the Clerk of the Court of Appeals for the Seventh Circuit to this Court.

The opinion of the United States Court of Appeals for the Seventh Circuit affirming said judgment, was filed on June 25, 1968, and is not yet reported, but is set forth in the appendix hereto and in the certified copy of the record as No. 16065 of that date.

JURISDICTION

The date of the judgment to be reviewed is June 25, 1968. A Petition for Rehearing was denied on August 5, 1968. This Petition is filed within 30 days of that order. The jurisdiction of this court is invoked under Title 28, U.S.C., Section 1254(1).

QUESTIONS PRESENTED FOR REVIEW

When, in the course of the execution of a search warrant for her residence, a woman, who is not even suspected of any unlawful activity, enters the home and sets down her purse, is that purse subject to search under the authority of the warrant?

When both the prosecutor and the trial judge concur that petitioner had dominion and control over her purse and that the purse was her private property, was not that purse protected against intrusion under the Fourth Amendment?

CONSTITUTIONAL PROVISION

Amendment IV—Searches and Seizures

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

This cause commenced on July 26, 1966, by filing of an indictment charging the purchase, sale, dispensing and distributing of 4.200 grams of heroin on July 23, 1966 in violation of Title 26, U.S.C. 4704(a) in the First Count; with the receipt, concealment and facilitation of the same narcotics in the Second Count in violation of Title 21, U.S.C., Section 174; and of 1.320 grams of cocaine in Count Three (C.L. 4-6).*

On September 19, 1966, a motion was made to suppress evidence and to return property on the ground that the search and seizure were unreasonable, not authorized by a warrant or search warrant, and that the property was not subject to search and seizure, all in violation of the Fourth Amendment to the Constitution (C.L. 17). The property was described as a purse and alleged narcotics. On September 20, 1966, an answer to the motion was filed alleging the existence on July 23, 1966 of a search warrant for the premises at 9736 South Longwood Drive, Beverly Hills, Chicago, Illinois and an arrest warrant for the person of Sheldon R. Teller, the husband of the petitioner,

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* "C.L. ....." refers to the Common Law Record. "R....." refers to the Transcript of Proceedings.

and that the purse and its contents were seized on the premises, and that, therefore, the search and seizure were valid. (C.L. 22-24)

A hearing was had on the motion and answer thereto (R. Sept. 22, 1966) and the motion was denied. (C.L. 27)

Trial on the case was had on September 26 and 27 to the Court, a jury having been waived (C.L. 28), and a finding of guilty as charged entered (C.L. 33).

On October 3, 1966, this petitioner filed a motion for judgment of acquittal or new trial (C.L. 34), which motion for new trial was granted as to Counts 2 and 3, and denied as to Count One on which a sentence of five years was imposed on November 22, 1966. Thereupon, Counts Two and Three were ordered dismissed on motion of the government. (C.L. 38)

On the Appeal to the United States Court of Appeals for the Seventh Circuit, your petitioner complained, inter alia, of the failure to suppress and exclude evidence found in her purse, which she was carrying when she entered the premises during the execution of the search warrant and which she set down on the bed in her bedroom, claiming that the search of such purse constituted an unauthorized search of her person, or an unauthorized search and seizure of her personal effects.

STATEMENT OF FACTS

On July 23, 1966, a warrant was issued for the arrest of one Sheldon R. Teller, and a search warrant issued for his dwelling and garage at 9736 South Longwood Drive, Beverly Hills, Chicago, Illinois, which warrant read as follows:

> "The undersigned being duly sworn deposes and says:
>
> "That he has reason to believe that on the premises known as dwelling and garage at 9736 S. Longwood Dr. Beverly Hills, Chicago, Ill. in the No. District of Ill. there is now being concealed certain property, namely money which is the fruit of a crime to wit, a violation of Title 21, Sec. 174. U.S. Code.
>
> "And that the facts tending to establish the foregoing grounds for issuance of a Search Warrant are as follows: Information from Samuel Washington, that he paid Sheldon R. Teller, occupant of said premises, $3,000 for narcotic drugs July 21, 1966. Carl L. Jackson, nar. agt., informed complainant he saw the delivery of the narcotics. Complainant furnished Washington with the money. According to Agts. Rendina and Hughes they observed said Teller in possession of narcotic paraphernalia on May 4, 1966." (Exhibit I)[1]

The petitioner herein is the wife of Sheldon Teller, and a resident of those premises. The premises were en-

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[1] Sheldon Teller was tried after this petitioner, and in that trial attack was made on the sufficiency of the affidavit. The failure to grant the Motion to Suppress is claimed as error on his appeal, now pending in the Seventh Circuit. It also developed on his trial that the information given by Narcotics Agent Jackson had its source in eavesdropping on an extension and via an electronic listening device attached to the person of the informer Washington.

tered by virtue of the warrant that issued on the basis of the affidavit above, and the search was made pursuant to that warrant. (R. 84, 85, 103)

When the agents of the Bureau of Narcotics accompanied by officers of the Chicago Police Department went to that address to execute the warrant (and also to execute the arrest warrant on Sheldon Teller) they first saw the petitioner behind the driver's seat of her Cadillac parked in the driveway of the house. (R. 151)

Mrs. Teller was with her children, preparatory to going on a shopping trip. The agents' car pulled into the same driveway thereby blocking her exit. (R. 7, 113, 114, 139)

The agents and the accompanying policemen (four of them) walked over to Mr. Teller, who was standing on the front lawn conversing with the occupants of the car prior to their driving away, and placed him under arrest. They put handcuffs on him and he asked that he not be observed by his neighbors handcuffed. They started toward the house, and he told them they would not be permitted to enter unless they had a search warrant. They thereupon produced a search warrant. This petitioner followed them into the house with her children.

At the time of the search the petitioner was the only woman on the premises. (R. 44-45, 113) Agent Pringle, together with another agent and a police officer, upon entering the home went immediately to the main bedroom. At the time Pringle went up to the bedroom he took Mr. Teller with him, and began to search. Mrs. Teller was then in the living room with one of the children. (R. 26-30)

Later petitioner went up to the bedroom and kissed her husband. She placed her purse on the bed, where it remained untouched for a period of about twenty minutes,

during which time she was in and out of the bedroom three times. (R. 78) After the twenty minutes Agent Pringle picked the purse up. (R. 26-35) He opened it and found several compartments inside with various feminine articles. In a side compartment, he found a small plastic vial containing a quantity of white powder and a piece of lined tablet paper creased down the center. He removed the white cap from the top of the vial, removed a small portion of the white powder, and conducted a marquis reagent field test on a portion of the powder, getting a positive result indicating the presence of an opium derivative. In a center compartment of the purse he found another plastic vial containing a quantity of white crystalline powder in a paper creased down the center, the paper was similar to the one he found in the first compartment. He also found $530.00 in United States Currency, two small address books, one of which contained two receipts made out to Leah Joyce Teller, 9736 South Longwood Drive, Chicago, Illinois, from Sy Devore Haberdashers and Clothiers of Sherman Oaks, California. There were also a set of car keys and household keys, a pair of women's silk hose, cosmetics, combs, and certain articles that would "normally" be found in a woman's purse. He thereupon arrested Mrs. Teller for violation of the federal narcotics laws, and warned her about her right to counsel and that any statements she made could be used against her in a court of law. Pringle asked her if the purse belonged to her and she said that it did. He asked her if the $530.00 belonged to her and she replied in the affirmative and that her husband Sheldon had given it to her to go shopping. He then asked her if the two plastic vials containing the white powder belonged to her, and she said that her husband told her not to answer any questions, that her husband would get their attorney. No inventory

was made of the money, though the numbers on the bills were checked. The purse was confiscated and the $530.00 was returned to Mrs. Teller.[2]

On the Motion to Suppress, it was the position of the petitioner that the search herein constituted an unauthorized search of her person, or at the least, an unauthorized search and seizure of her personal effects:

The contention of the government, while admitting there was no warrant for the arrest of petitioner, contended there was an arrest warrant for the person of her husband, Sheldon R. Teller, and that there was a search warrant for the house, and that the material which was in the purse and possession of the petitioner was subject to search and seizure under the search warrant. (R. 54-55, proceedings September 22, 1966)

In the Court of Appeals, the petitioner argued that common experience requires recognition of the supreme privacy a woman attaches to her purse; that it is, in fact, an extension of her person; and the necessity that it must, by its nature, be put down from time to time, does not affect its personal nature.

The Court of Appeals rejected the argument holding:

> "The fallacy of this argument is that, while it recognizes that the use of a practical means of carrying articles with her is employed when a woman carries a purse, which is undoubtedly selected to harmonize with her costume and personal appearance generally, those incidental effects result only when she is *carrying* a purse in harmony with the color context of her clothing

[2] All other moneys found in the house were seized. Among the $45,471.00 taken, $2700 was identified as "advance funds" given the "special employee" Washington by the Narcotics Bureau.

and general appearance, *i.e.* when she is 'wearing' a purse. The same reasoning would apply to any of her garments. On the other hand, it is obvious that, when defendant placed the purse upon the bed and left the room, she was not continuing to 'wear' it as an 'extension of her person'. For the time being at least the purse was then no more a part of her person than would have been a dress which she had worn into the room and then removed for deposit in a clothes closet. We conclude that it would be contrary to the facts to hold that a search of a purse lying upon a bed, where it was placed by its owner, constitutes a search of the *person* of that owner, who had placed it there and then left the room.

* * *

"Defendant's purse lying on the bed was merely another household item subject to the lawful execution of the search warrant which the federal agents held and were enforcing. See *Walker* v. *United States,* D.C. Cir., 327 F.2d 597 (1963), cert. denied 377 U.S. 956." (A. 4-5)

The petitioner argued, as an alternative, that if a purse were not considered an extension of her person, it was certainly one of her "effects" protected by the Fourth Amendment.

This argument was certainly in accord with the theory of the prosecution and the express findings of the Trial Court:

"The Court: Let me ask you a question, Mr. Connelly [prosecutor]: As a matter of law, not that it is relevant to this case particularly, though it occurred to me as I thought about this case, are husband and wife both in possession of everything that is in the house?

"Mr. Connelly: No, sir.

"The Court: They are not?

"Mr. Connelly: No, sir.

"The Court: How do you determine who is in possession of something that is in a house? The furniture in my house, for example, aren't my wife and I both in possession of that?

"Mr. Connelly: Yes, I would think — "

* * *

"The Court: I wasn't asking the specific question here except as it would have relevance to this, but I was just curious as to the general proposition in law with respect to the possession. As I understand the definition, it is that you have dominion or control. Whether you have it in your hand or not isn't material. It is whether you have the authority or power to do something with it, to move it, to sell it, to give it away, or what have you.

"Mr. Connelly: As far as this case, for the purposes of this case, *there was no charge about dominion and control over anything as far as this defendant was concerned except that purse.*

"The Court: I understand that. But I would think that the purse would be maybe one thing that you could not say that the husband, on the other hand, had control of. I take it my purse — that isn't even necessarily true, but *I like to think that I have control over my purse.* But other things in the house, it seems to me, my wife and I both have control, possession in the legal sense with respect to.

"I was just pondering that as I thought about the case. I was wondering if you could give me a quick answer as to what the law is.

"Mr. Connelly: I don't have a quick answer, and I am limiting my argument to the specific facts because *we did not charge her with control or custody of anything other than her own purse.*

"The Court: I understand." (R. 185-191) (Our emphasis).

Ultimately, the Court made a clear finding the purse was the petitioner's personal effect:

"The Court: All right, fine.

"Well, I come now, then, to an analysis of the evidence as I see it, and judgment based on that analysis.

"I think there is no dispute that the purse in question was the property of the defendant. I think there is no dispute that she had it in your possession over an extended period of time from the time she was in the automobile to the time that she laid it on the bed in the second floor master bedroom of the residence which she and her husband occupied.

"I think there is no dispute that substantially *all of the contents of that purse* as they now exist *are her personal property, were her personal property at the time that the purse was examined* by Agent Pringle." (R. 245-246) (Our emphasis).

It should also be noted that the personal nature and individuality of the purse was recognized by the searching agents, who were searching for "money" under the authority of the warrant, and seized every dollar on the premises in execution of the warrant but returned to the petitioner the $530.00 found in her purse.

Of the alternative argument, that the purse constituted the petitioner's "effect", the Court of Appeals said nothing.

REASONS FOR GRANTING THE WRIT

This Court should issue its Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit for the following reasons:

1. The allowing of the search of property under the recognized control and in the custody of a person, who is not even suspected of crime, on the basis that she and her property are within a house for which a warrant to search has issued is a serious inroad upon the Fourth Amendment. The question of whether such a custodian is divested of the sanctity and individuality of her own person and own effects by virtue of the search warrant presents an important question of Constitutional Law which has not been, but should be, decided by this Court.

2. The decision in this case is in conflict with applicable decisions of this Court, particularly *United States* v. *DiRe*, 332 U.S. 581.

I.

The important question of federal law which should be settled by this Court is: Is a woman's purse which she is currently wearing or using such an extension of her person as is protected from unreasonable search in the execution of a search warrant for premises. That is the immediate aspect, but it has much larger connotation. Stated more broadly, does a person who enters onto premises being searched, possessed of individual personal belongings and effects, do so, even unknowingly, at the hazard that his privacy, that on the street or door-stoop is impregnable, will vanish?

Further, the purpose of the warrant is defeated. It issued to search for property, for which there was "reasonable cause" to believe was *on* the premises. The warrant does not issue for what might later come onto the premises.

This Court has held that the Fourth Amendment and legislation regulating searches and seizures should be liberally construed in the individual's favor, to prevent impairment of the protection extended by the Constitutional Amendment.

The opinion of the Court of Appeals in effect holds that while a woman's purse may be an extension of her person, it becomes something else when set down. "Defendant's purse lying on the bed was merely another household item subject to the lawful execution of the search warrant which the federal agents held and were enforcing."

Yet the trial court had recognized that "all of the contents of that purse as they now exist are her personal property, were her personal property at the time that the purse was examined by Agent Pringel."

So the logical extension of the Court of Appeals' reasoning is that armed with a search warrant for premises only, the agents could search all purses, briefcases, luggage, etc. if the person in the premises in coming into the premises is unfortunate enough to set the item down. That Court's opinion holds that the purse was personal only so long as she held it, contrary to the theory of prosecution (see *infra,* 10-11 where it is clear that dominion over all other "household effects" were attributed to Sheldon Teller).

The difference between a search of the person and a search of a purse or other containers of personal effects which the person is carrying is difficult, if not impossible, to see, since the Constitutional Amendment (IV) articulates

"effects" with the same dignity as "persons". The United States District Court for the Southern District of California recognized that "The protection of this Amendment extends to the 'effects' as well as to the persons and houses of the people." *United States* v. *Hortze,* 179 F.Supp. 913, 917. Also see *United States* v. *Peizner,* 4 Cir., 311 F.2d 94, 101 and *United States* v. *Maroney,* 3 Cir., 339 F.2d 910, 914.

Your petitioner respectfully suggests that this case presents a novel and important question in the law of search and seizure and calls for a defining of the privacy protected and should be decided by this Court.

II.

The decision of the Court below that "Defendant's purse lying on the bed was merely another household item subject to the lawful execution of the search warrant . . . " (A. 6), clearly recognizing the ownership of the petitioner, at the same time ignores, what this Court has called "the shift in emphasis from property to privacy"[3] in enforcing the Fourth Amendment.

If the privacy of a personal effect can be destroyed by entry on premises being searched, as the 7th Circuit has held, it is only a logical extension that the privacy of a person is equally destroyed. "By a parity of reasoning with that on which the Government disclaims the right to search occupants of a house . . . ",[4] we must assume equal disclaimer of an occupant's personal effects.

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[3] *Warden* v. *Hayden,* 387 U.S. 294.

[4] *United States* v. *DiRe,* 332 U.S. 581.

We respectfully submit that the reasoning of this Court in *United States* v. *DiRe,* 332 U.S. 581 is applicable here, that the right of privacy has been equally breached without warrant or reasonable cause, and that the decision of the United States Court of Appeals for the Seventh Circuit is violative of the Fourth Amendment, as its protection has been interpreted by this Court.

CONCLUSION

Wherefore, for the above and foregoing reasons, it is respectfully submitted, that this Court should issue its Writ of Certiorari to the Seventh Circuit Court of Appeals to review the decision herein.

Respectfully submitted,

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